



DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012-0076; Sequence 47]

[OMB Control No. 9000-0091]

Federal Acquisition Regulation;

Submission for OMB Review; Anti-Kickback Procedures

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning anti-kickback procedures. A notice was published in the Federal Register at 77 FR 75164, on December 19, 2012. One respondent submitted comments.

DATES: Submit comments on or before [Insert date 30 days after publication in the Federal Register.]

ADDRESSES: Submit comments identified by **Information Collection 9000-0091, Anti-Kickback Procedures**, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0091, Anti-Kickback Procedures". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0091, Anti-Kickback Procedures" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street Street, NW, Washington, DC 20405-0001. ATTN: Hada Flowers/IC 9000-0091, Anti-Kickback Procedures.

Instructions: Please submit comments only and cite Information Collection 9000-0091, Anti-Kickback Procedures, in all correspondence related to this collection. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, (202) 219-0202 or email Cecelia.davis@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation (FAR) 52.203-7, Anti-Kickback Procedures, requires that all contractors have in place and follow reasonable procedures designed to prevent and detect in its own operations and direct business relationships, violations of 41 U.S.C. chapter 87, Kickbacks. Whenever prime contractors or subcontractors have reasonable grounds to believe that a violation of the statute may have occurred, they are required to report the possible violation in writing to the contracting agency inspector general, the head of the contracting agency if an agency does not have an inspector general, or the Department of Justice. The information is used to determine if any violations of the statute have occurred.

There is no Governmentwide data collection process or system which identifies the number of alleged violations of 41 U.S.C. chapter 87, Kickbacks that are reported annually to agency inspectors general, the heads of the contracting agency if an agency does not have an inspector general, or the Department of Justice.

B. Discussion and Analysis

The analysis of the public comment is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the Federal Register notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to the requirements at FAR 52.203-7(c)(2), which requires contractors and subcontractors to promptly report possible violations of the Kickbacks statute to the Government. There are no aspects of this requirement that can be reduced or eliminated without negatively impacting the ability of the Government to assess contractor responsibility, investigate and address potential criminal actions, and protect the Government's interests in maintaining the integrity of the acquisition process. Not granting this extension would consequently eliminate a FAR clause that provides a benefit to the public and the agency collecting the information.

Comment: The respondent commented that the agency did not accurately estimate the public burden, stating that the agency's methodology for calculating the burden is insufficient and inadequate and does not reflect the total burden. The respondent stated that—

- The actual number of respondents subject to the information collection is likely 25 to 50 times greater

than the estimate of 100 respondents (i.e., 2500 to 5000);

- There is no basis provided for the estimate of 1 response per respondent; and
- The estimate of 1 hour per response is unreasonably low and unsubstantiated. The estimated burden hours should be modified in this instance for the same reasons that they were modified upward in FAR Case 2007-006, Contractor Business Ethics Compliance Program and Disclosure Requirements.

Response: It is important to distinguish between the total burden of compliance with a particular provision or clause, and the portion of that burden that constitutes an information collection requirement. This analysis addresses the latter. In this particular case, the information collection requirement is in paragraph (c)(2) of 52.203-7, which requires a report of possible violations to the Government. Establishing procedures within an organization to prevent and detect anti-kickback violations or cooperating with a Federal investigation do not constitute information collection requirements.

Therefore, the only contractors and subcontractors included in the estimate of respondents to the information collection requirement are those contractors or subcontractors that are reporting a suspected violation of the Kickback statute in a given year. Based on discussions with subject matter experts

with experience in an Office of the Inspector General, the estimate of 100 responses per year more than likely exceeds the actual responses. It is also unlikely, that the same respondent would be reporting instances of kickback violations more than once in a year. The estimated number of respondents and responses remain as previously approved.

With regard to the estimated information collection burden hours, as stated in the Federal Register notice for FAR Case 2007-006, burden includes estimated hours only for those actions which a company would not undertake in the normal course of business. In the normal course of business, a company that is concerned about ethical behavior will take reasonable steps to determine the credibility of allegations of misconduct within the firm. It is left to the discretion of the company what these reasonable steps may entail. The Government has added the requirement to report in writing to the Government when the Contractor has reasonable grounds to believe that a violation of the Kickback statute has occurred, which would not necessarily otherwise occur. The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing

the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Careful consideration went into assessing the burden for this collection. However, upon further discussion with subject matter experts, we have revised upward the estimated hours to 20 hours per response, considering particularly the hours that would be required for review within the company, prior to release to the Government. At any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

Comment: The respondent stated that the agency and OMB should assess the need to extend this information collection requirement in the context of assessing the total information collection burden. The respondent further commented that the "collective burden of compliance" required of the Government acquisition community annually totals over 30 million hours. According to the respondent, the collective burden greatly exceeds the agency's estimates and outweighs any potential utility of the extension.

Response: The criteria for extension of an information collection requirement must be based primarily on the need and use for the required information. It is essential for

contractors to report violations of the Kickback statute, regardless of whether there are 100 responses per year or 1000 responses per year. If the agencies have determined that the information is essential to comply with statute or to protect the interests of the Government, then the extension should be approved. If there are questions concerning the validity of the estimated burden hours, those can be reviewed and refined as necessary.

We cannot effectively address the broad allegations with regard to the accuracy and utility of the entire collective burden imposed on all Federal acquisitions. We can only effectively address each individual information collection requirement that is under consideration for OMB approval. As stated, the respondent has not pointed out any aspect of the Anti-Kickback clause that could be amended to reduce the information collection burden imposed by that clause. Further, the respondent specifically does not challenge the propriety of the underlying information collection requirement. We constantly review information collection requirements imposed by FAR regulations for ways to reduce the burdens and still achieve the objectives of the regulations, whether based on policy or statute. We would welcome any specific recommendations as to information collection requirements (other than those required by statute) in which the burden is perceived to outweigh the

benefit, with specific recommendations as to how the burden should be reduced.

C. Annual Reporting Burden

Respondents: 100.

Responses Per Respondent: 1.

Annual Responses: 100.

Hours Per Response: 20.

Total Burden Hours: 2,000.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street Street, NW, Washington, DC 20405-0001, telephone (202) 501-4755. Please cite OMB Control No. 9000-0091, Anti-Kickback Procedures, in all correspondence.

Dated: July 18, 2013

William Clark,
Acting Director,
Office of Governmentwide Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

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